

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**100 Maryland Avenue, Suite 200**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:** \*  
**ELDERHOME LAND LLC aka** \*  
**BROOKSTONE SENIOR LIVING** \*  
 Applicant \*

Chris Hoard \*  
 Christopher Palkowitsch \*  
 John Nielson \*  
 Carl Wilson \*  
 Dean Packard \*

OZAH Case No. CU 23-12

For the Application \*

Soo Lee-Cho, Esquire \*  
 Attorney for the Applicant \*

\*\*\*\*\*

Eileen Meyer \*  
 Lauren Taylor \*  
 Piara Singh \*  
 Arpan Gosch \*  
 Kathy Menasco-Smith \*

Opposing the Application \*

\*\*\*\*\*

Before: Lynn Robeson Hannan, Hearing Examiner

**HEARING EXAMINER’S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

Filed on March 3, 2023, Eldercare Home LLC aka Brookstone Senior Living (hereinafter "Applicant" or "Brookstone") has applied for a conditional use for a Residential Care Facility (over 16 persons) under Section 59.3.3.2.E.2.c of the Zoning Ordinance. The subject property is identified as Block B, Outlot A, Valley Stream Estates (Tax Account No. 05-03552453), which is located generally south of the intersection of Md. Route 198 and Dino Drive and southwest of the intersection of Dino Drive and Valley Stream Avenue in Burtonsville, Maryland 20866. Exhibits 1, 12. The property is zoned R-200. *Id.*

OZAH issued a Notice of Hearing on January 3, 2024, scheduling the public hearing for February 16, 2024. Exhibit 35. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its Staff Report recommending approval subject to five conditions (Exhibit 36, p. 3):

- 1) The use is limited to a Residential Care Facility (over 16 persons) use.
- 2) The proposed facility must have no more than 88 dwelling units.
- 3) The proposed facility must have no more than 91 total beds in the assisted living and memory care areas.
- 4) A Preliminary Plan of subdivision is required.
- 5) At the time of Preliminary Plan, the Applicant must enter into a surety and maintenance agreement that includes any landscape and lighting approved by the Hearing Examiner.

The Planning Board recommended approval of the project with the conditions recommended by Staff. Exhibit 37.

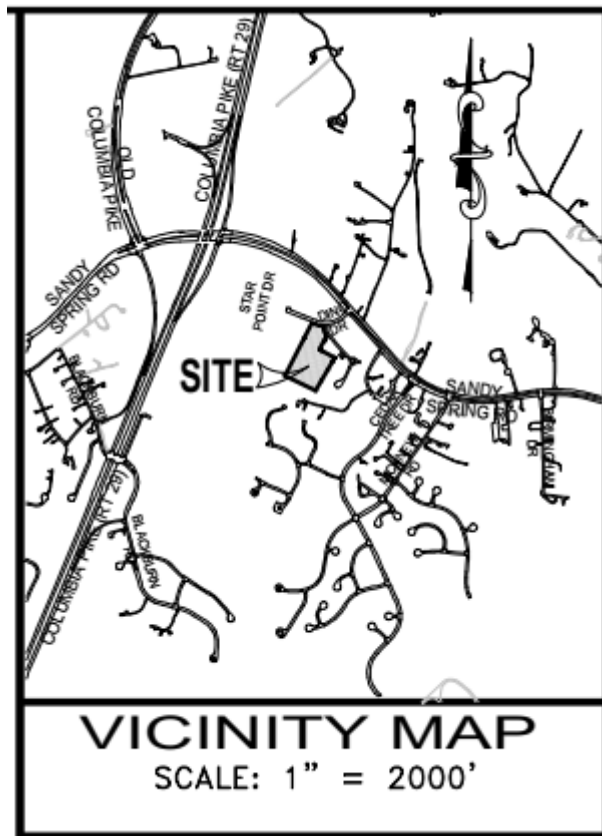
The public hearing proceeded as scheduled on February 16, 2024. The Applicant presented five witnesses, including a principle of Brookstone and four witnesses who qualified as experts in land planning and architecture, traffic engineering, civil engineering, and landscape architecture. T. 30, 77, 129, 163. At the public hearing, Brookstone offered to install a 6-foot board on board fence along the property's boundary with single-family detached residences. The fence would extend along locations where the parking lot elevation was less than 6-feet below the grade at the property

line. T. 175. The Hearing Examiner left the record open until February 27, 2024, to receive the revised plan and any comments from the community. T. 204-205. These were timely submitted, and the record closed on February 27, 2024. Exhibits 53 through 57. The Hearing Examiner reopened the record on March 21, 2024, solely to include emails from the Hearing Examiner and Brookstone's response regarding the project's age-restricted status. Exhibit 59. The record closed again on March 21, 2024.

## II. FACTUAL BACKGROUND

### A. Subject Property

The property consists of approximately 5.68 acres located southwest of the intersection of Valley Stream Avenue and Dino Drive. Exhibit 36, p. 1. A vicinity map from the conditional use plan shows its general location (Exhibit 10(b), below):



Staff describes the property as unimproved and mostly forested, sloping from a high point nearer to Dino Drive south to a stream just outside the property boundary. Exhibit 36, p. 5. Mr. Dean Packard, Brookstone's expert in civil engineering, testified that the site rises from Dino Drive to a high point near the center of the property, and then drops toward the stream. The stream runs parallel to the western property line and then veers further west. T. 164. The property contains approximately 4.1 acres of forest and stream valley buffer, located in the west side of the property. T. 163. To the northwest is an open area that will be replanted with trees. *Id.* An aerial photograph from the Staff Report shows the subject property (Exhibit 36, p. 5, below):<sup>1</sup>



Staff also reports that the property contains a stream, small wetland, and stream valley

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<sup>1</sup> The aerial photograph from the Staff Report has due north pointing to the top of the photograph. The various plans submitted orient the property so that due north is at an angle. Because of this, witnesses used directions based on the plan orientation (*i.e.*, “plan north” meaning the top of the document, “plan south” meaning the bottom, etc.). The Hearing Examiner follows this practice to avoid confusion.



buffer in the southwest corner along the rear property line.

### B. Surrounding Area

The “surrounding area” of a proposed conditional use is the area that will be directly impacted by the proposed use. It is delineated and characterized to determine whether the proposed use will adversely affect the area’s existing character.

Staff’s recommended boundaries of the surrounding area (outlined in yellow) are shown in the aerial photograph below (Exhibit 36, p. 4):



Staff described the area as (*Id.*):

The neighborhood as defined is comprised of moderate-density residential development and commercial uses such as offices, retail, self-storage, and warehousing uses. Staff did not find any active Conditional Uses/Special Exceptions in the defined neighborhood. The properties to the northeast, east, and south are all zoned R-200 and are comprised of moderate residential density uses. The property to the southwest of the Subject Property is Fairland Recreational Park.

The properties to the west are zoned EOF [Employment Office Floating Zone] and are comprised of office and warehousing uses. The properties to the north are zoned IM [Moderate Industrial Zone] and are comprised of a self-storage use and a vacant, unimproved parcel.

Mr. Christopher Palkowitsch, Brookstone's expert in land planning and architecture, agreed in general with Staff's delineation of the neighborhood. He testified that there is a wedge of homes between Staff's eastern boundary and the Moose Lodge that might have been included, however, impacts from the use were too attenuated to include homes further to the south. T. 34.

The Hearing Examiner accepts Staff's delineation of the surrounding area with the additional homes mentioned by Mr. Palkowitsch. There is nothing in the record to demonstrate that the character of the area would change were they included.

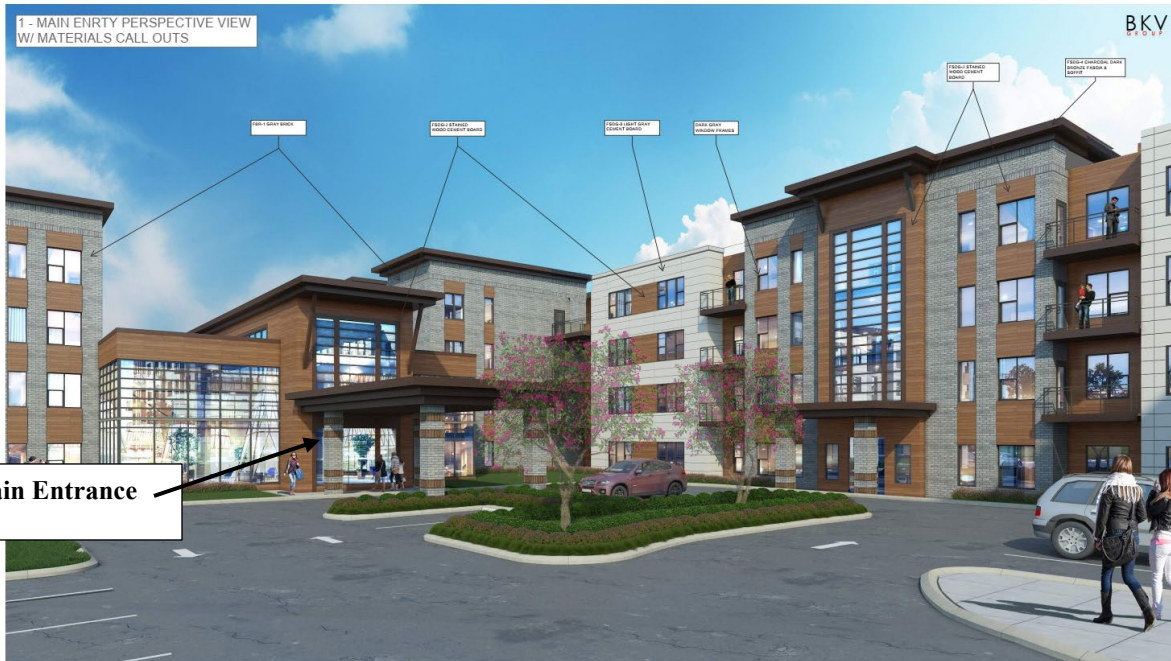
The Hearing Examiner also agrees with Staff's characterization of the surrounding area as a mix of moderate-density residential uses in the R-200 Zone primarily to the northeast, east and south of the subject property. Properties to west are employment uses that stop abruptly at the subject property. Uses to the north are industrial. The area's character is a mix of employment, industrial and moderate density residential uses separated by the subject property.

### **C. Proposed Use**

Mr. Christopher Hoard is President, co-founder, and Chief Development Officer of Distinctive Living Development. He has almost 25 years of experience in senior housing. T. 14. The company's mission is to bring excitement, inspiration, meaning and impact to the senior living industry by offering deliberate comprehensive care for its residents, impactful work environments for employees and rigorously working for investor returns. This project is unique for his company because it is larger than typical for them and incorporates a continuum of care. The setting will be very nice; natural creeks will be behind the building for a visually peaceful setting that residents and family members can enjoy. T. 19.



Brookstone proposes to develop a residential care facility with 88 independent senior dwelling units, and 91 beds for assisted living and memory care. Exhibit 36, p. 6. The main entrance is two and one-half stories with two wings that are four stories. Perspective views are shown below (Exhibit 27):



View of Main Entrance

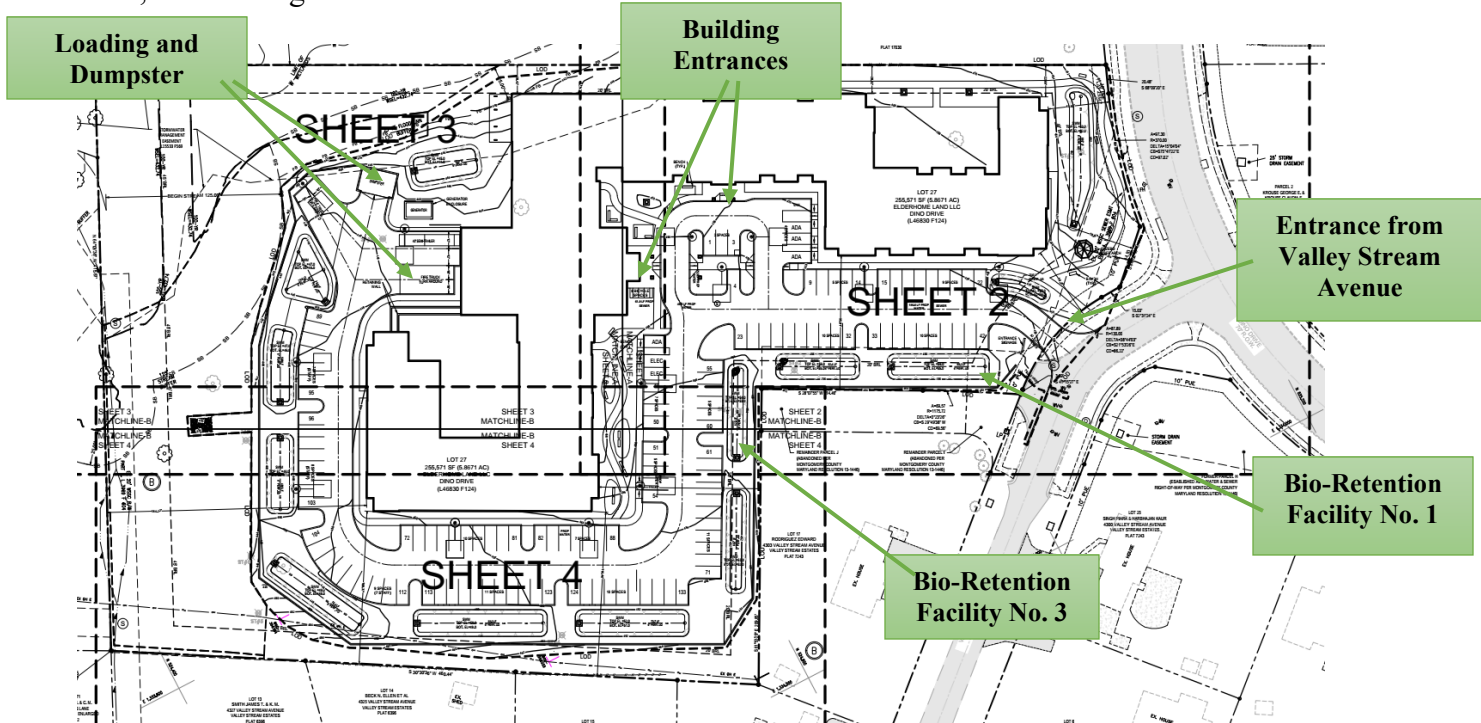


View from Dino Drive



## 1. Conditional Use Plan

The conditional use plan (Exhibit 12(a), below) shows the layout of the building, parking, trash, and loading facilities:



Staff advises that the resident and visitor entrance is centrally located within the site and the dumpsters and loading dock are in the rear. Exhibit 36, p. 6. Mr. Packard testified that the building was purposefully located as far as possible from the single-family detached homes bordering the property.

He also testified that the layout takes advantage of the existing grade to further screen the parking area. After entering from Valley Stream Drive the parking lot drops away from the building. The first stormwater bio-retention facility after the entrance is approximately 2 feet below the grade of the surrounding residential property. Proceeding counterclockwise, bio-retention facility No. 2 is approximately four feet below grade and then at bio-retention facility No. 3, the parking lot is approximately eight feet below the grade of the adjoining property. T. 173-174. Bio-retention facilities Nos. 5 and 6 are approximately 10 feet below the grade. The

edge of the single-family residences ends at facilities 6 and 7. At that point, the parking area is approximately 6 feet below grade. Along the rear of the property, the ground slopes downward from the building toward the stream. The property there is forest and stream valley buffer, no one lives adjacent to the property at that location. T. 174-175. According to him, the difference in elevation between the parking lot and the top of the grade will screen any glare from headlights from the parking area. T. 173-175

## **2. Site Landscaping, Lighting and Signage**

### *a. Landscaping.*

Mr. John Nielson, Brookstone's expert in landscape architecture, described the landscaping proposed. Exhibit 53. Brookstone worked to stress the landscaping at the arrival point from Dino Drive and push the on-grade parking back from the property lines to enhance the green arrival experience entering the site. This provides a screen when residents are walking as well. T. 81. They have a buffer along Dino Drive planted against the building. There is an amenity pathway that connects to a pedestrian pathway that enters the site. The arrival area will feature planting and a meandering pathway connecting to Dino Drive. There will be some seating elements along that path and some shady areas for residents to sit. They also have a green buffer against the building to create a very nice, landscaped arrival experience. T. 82. The building entries will have a signage element with soft accent lighting. T. 81.

Brookstone maximized space for landscaping around the residential buffers by pushing the building plan north towards the more commercial/industrial uses areas. The grade differential along the property line already creates a "soft buffer." T. 82. The large building setback and landscaping will provide a "green edge" along the side bordering the residential homes. T. 82. They also placed the landscaped stormwater management bioretention facilities along that side to essentially expand the width of the buffer. T. 83.

Part of their landscape strategy is to use native and locally adapted plant species from a list published by the Maryland Native Plant Society and University of Maryland. This ensures that they will not be introducing any invasive species, particularly into the adjacent stream valley buffer. T. 83.

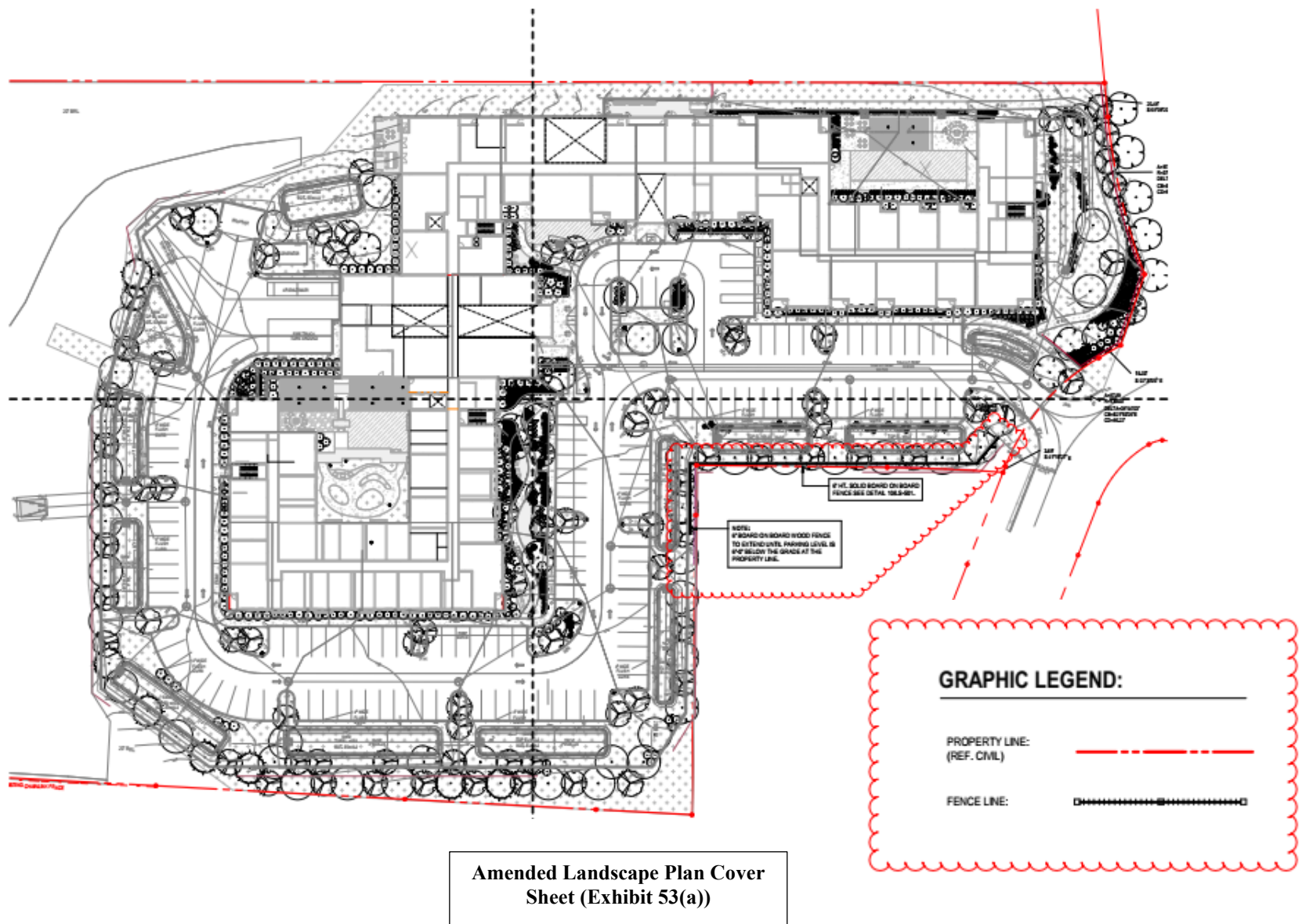
At the public hearing, Brookstone proposed to amend the landscape plan to include a 6-foot board-on-board fence along the property line adjacent to single-family homes. The fence would extend from Bio-retention facility No. 1 near the entrance until the grade difference reached 6 feet. The fence would be located at the property line butting those homes, followed by the 10-foot-wide landscaping, and then by the bio-retention facilities. T. 177. Excerpts from the amended Landscape Plan (Exhibit 53(a)-(c), showing the fence, are on the following pages.

They're also providing a landscaped courtyard along the south side for residents of the assisted living facility. The memory care courtyard will be closed. T. 85. There is a podium level independent living courtyard looking out toward the plan north side as well as a deck. T. 85.

*b. Lighting.*




















The Lighting Plan (Exhibit 13) shows 13 pole lights that are 16 feet tall distributed around the parking area and a drive aisle behind the building. T. 109. There will be exterior lighting against the building (not shown on the Lighting Plan) to highlight walkways and the entrances. According to Mr. John Nielson, these will be very soft, access lighting designed only to highlight the entry and exit elements. T. 89.

As submitted, the Plan originally did not show shielded fixtures. At the public hearing, Brookstone agreed to a condition requiring full cut-off fixtures with shields surrounding all sides of the light. T. 108.





**PROPOSED PLANT SCHEDULE:**

Type Image	SYM	COMMON NAME	SCIENTIFIC NAME	PLANTING SIZE	COMMENTS
<b>DECIDUOUS CANOPY TREE</b>					
	TAX DIS	BALD CYPRESS	Taxodium distichum	3" CAL. MIN., 14' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
	JUN VIR	EASTERN REDCEDAR	Juniperus virginiana	3" CAL. MIN., 14' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
	ACE RUB	RED MAPLE	Acer Rubrum 'Bowhall'	3" CAL. MIN., 14' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
<b>ORNAMENTAL TREE</b>					
	AIIE SER	ALLEGHENY SERVICEBERRY	Ameanchier serviceberry	1.5" CAL. MIN., 10' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
	MAG VIR	SWEETBAY MAGNOLIA	Magnolia virginiana	1.5" CAL. MIN., 10' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
	CHI VIR	WHITE FRINGETREE	Chionanthus virginicus	1.5" CAL. MIN., 10' HT.	B&B OR CONTAINER, FULL & MATCHED STRAIGHT LEADER
<b>DECIDUOUS SHRUB</b>					
	RHU ARO	FRAGRANT SUIIAC	Rhus aromatica	3 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
	VB ACE	MAPLE LEAF VIBURNUM	Viburnum acerifolium	5 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
	LIN BEN	SPICEBUSH	Lindera benzoin	5 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
	COM PER	SWEET FERN	Comptonia peregrina	3 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
	LTE VIR	VIRGINIA SWEETSPIRE	Ilea virginica 'Henry's Gamet'	3 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
<b>PERENNIALS/GROUNDCOVERS/GRASSES</b>					
	CAR PEN	PENNSYLVANIA SEDGE	Carex pennsylvanica	5 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
	PAN VIR	SHENANDOAH SWITCHGRASS	Panicum virgatum 'Shenandoah'	5 GAL. MIN., 12-24" HT. MIN. @ PLANTING	CONTAINER
<b>EVERGREEN SHRUB</b>					
	ILE GLA	INKBERRY	Ilex glabra	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER
	ILE VER	WINTERBERRY HOLLY	Ilex verticillata	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER
<b>PERENNIALS/GROUNDCOVERS/GRASSES</b>					
	SYM OBL	AROMATIC ASTER	Symphyotrichum oblongifolium 'October Skies'	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER
	PHL SUB	EMERALD BLUE CREEPING PHLOX	Phlox subulata 'Emerald Blue'	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER
	EUT DUB	LITTLE JOE PYE WEED	Eutrochium dubium 'Little Joe'	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER
	SPI TOM	STEEPLEBUSH	Spirea tomentosa	1 GAL., 8-18" MIN. HT. @PLANTING	CONTAINER

Landscape Plan Legend  
Exhibit 53(a)

*c. Signage.*

A sign, which will be backlit, will be located near the entrance to the property near Dino Drive. It will be located to the left as you exit Dino Drive and enter the site. Mr. Nielson opined that the light for the sign would not increase the level of illumination shown at the property lines.

T. 93. A detail from the conditional use plan showing the sign location (Exhibit 12(a)) is below:



### 3. Operations

Mr. Carl Wilson, Brookstone's expert in traffic engineering, testified that there would be up to 44 employees on-site at one time. T. 136. Employee shifts are broken down into care staff, food and beverage staff, and administrative, housekeeping and maintenance staff. The shift times are shown in a table from Brookstone's Statement of Operations (Exhibit 8, p. 1, on the next page).

The maximum of 44 employees on-site occurs between 10:00 a.m. and 2:00 p.m. and at shift changes. T. 132; Exhibit 8. Typical weekend staffing will be a maximum of 14 employees between 7:00 a.m. and 11:00 p.m. Management staff will be on-site 7 days a week to oversee operations. Exhibit 8.

Staff	Hours
<b>Care Staff:</b>	
Morning Shift	7:00 a.m. to 3:00 p.m.
Evening Shift	3:00 p.m. to 11:00 p.m.
Night Shift	11:00 p.m. to 7:00 a.m.
<b>Food/Beverage Staff:</b>	
Morning Shift	6:00 a.m. to 2:00 p.m.
Afternoon Shift	10:00 a.m. to 2:00 p.m.
Evening Shift	2:00 p.m. to 8:00 p.m.
<b>Other</b>	
Administrative, housekeeping, maintenance	8:00 a.m. to 5:00 p.m.

The Staff Report states that on-site amenities will include: “...interior and exterior courtyards, an indoor pool, fitness gym, beauty salon, music room, pub, a restaurant-style dining room, and transportation services.” Exhibit 36, p. 8. Brookstone’s Statement of Justification lists additional amenities such as a car and driver for transportation needs and a pool. Exhibit 7, p. 28.

#### **D. Environmental Issues**

Staff advised that the site contains a stream, small wetland, and stream valley buffer that drains to an off-site stream along the southwestern site boundary. Exhibit 36, p. 18. The Planning Board has approved a Preliminary Forest Conservation Plan for the subject property. Exhibit 41.

#### **E. Community Response**

Five individuals from Valley Stream Estates, the residential community adjacent to the eastern side of the subject property, testified in opposition to the proposed development. Their concerns included traffic safety. Several stated that it is dangerous to make left turns from Dino Drive onto Maryland Route 198. Others testified of delays at that location due to trucks doing U-turns. Some complained that traffic speeds down Valley Stream Avenue, a cul-de-sac, because people get lost going to the post office. Those in opposition also feel that the project does not comply with the *1997 Fairland Master Plan* (Master Plan or Plan). They believe that the size and

height of the facility and its modern design are incompatible with their neighborhood. Some expressed concerns about lighting and light pollution. T. 183-198. Their concerns are set out in more detail in the next part of this Report.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied to a Residential Care Facility Facility (over 16 persons) are in Section 59.3.3.2.E.2.c of the Zoning Ordinance. The general standards (termed "Necessary Findings" in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

#### **A. Necessary Findings (General Standards, Section 59.7.3.1.E)**

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.<sup>2</sup> For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Compatibility with the Surrounding Area;
3. Adequate Public Facilities; and
4. No Undue Harm from Non-Inherent Adverse Impacts

#### ***E. Necessary Findings***

***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

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<sup>2</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.



***a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

Conclusion: Staff advises that there was a previous special exception application that was approved but expired and is no longer valid. Exhibit 36, p. 10. Brookstone's Statement of Justification indicates that the prior special exception approval was for 120 beds. Exhibit 7, p. 8.<sup>3</sup> The Hearing Examiner agrees with Staff that this provision is not applicable because the prior approval has expired.

***b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;***

Conclusion: This subsection requires review of the development standards of the R-200 Zone contained in Article 59.4; the use standards for a Residential Care Facility (over 16 persons) contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D of this Report, respectively). For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

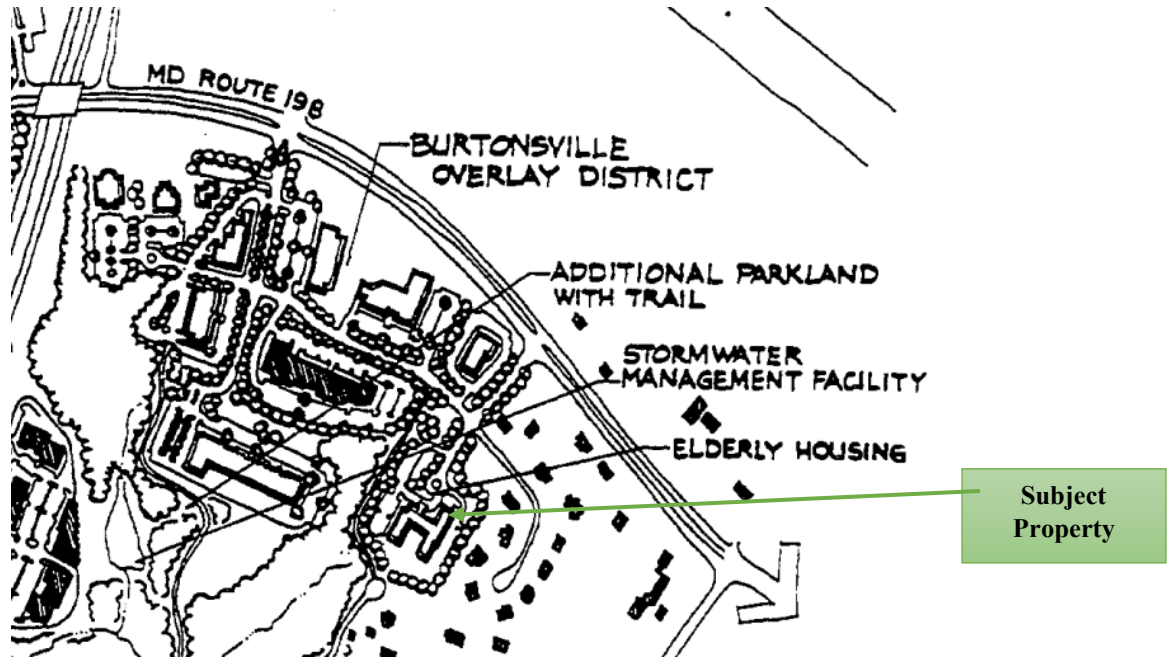
### **1. Substantial Conformance with the Master Plan**

***c. substantially conforms with the recommendations of the applicable master plan;***

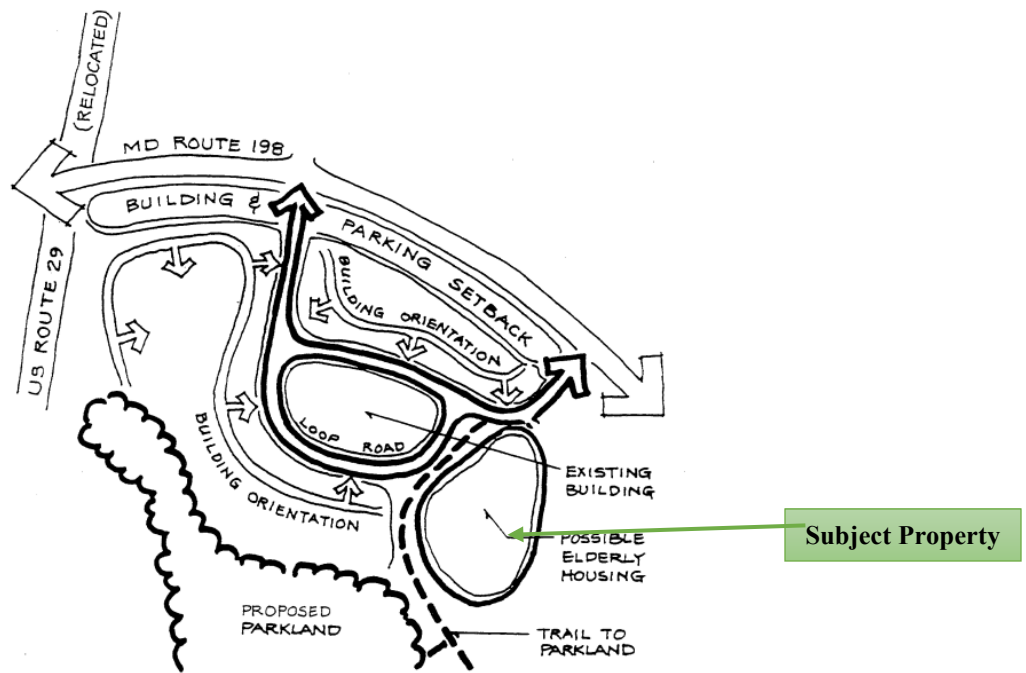
Staff advises that the *1997 Fairland Master Plan* (Master Plan or Plan) guides development of this property. Staff found that the proposed use complies with the Master Plan because the Master Plan "specifically identifies the Property for elderly housing on page 70—Figure 30, page 83—Figure 35 and page 84—Figure 36." Exhibit 36, p. 13. Two of these figures are shown below:

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<sup>3</sup> The record reflects that this application is for 91 independent living units and 88 assisted living/memory care beds, a total of 179 different types of units. Exhibit 36, p. 3.



1997 Fairland Master Plan  
Figure 30, p. 70



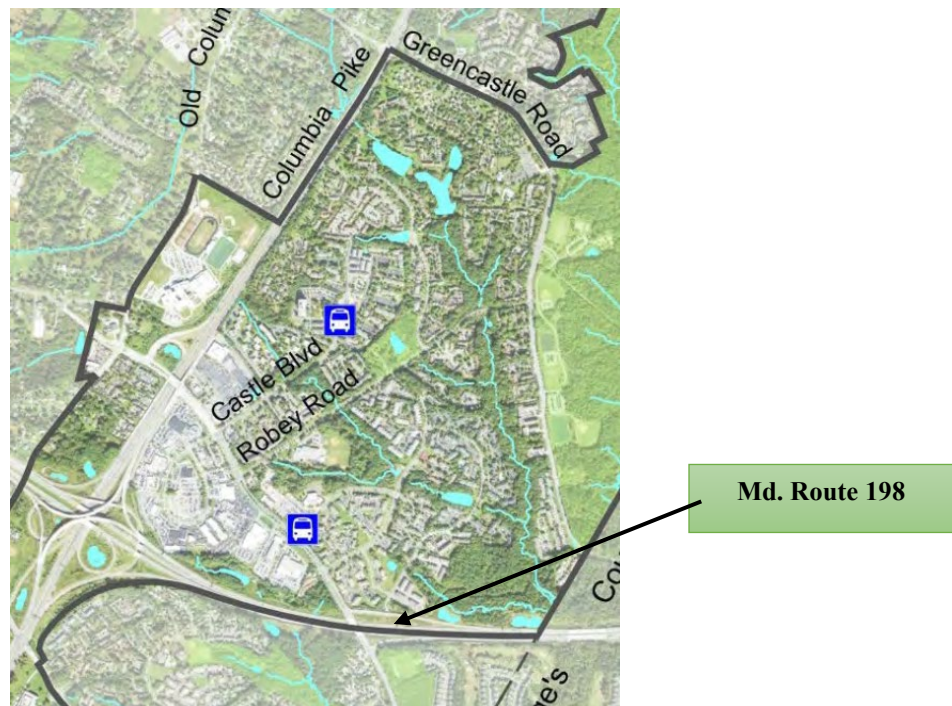
1997 Fairland Master Plan  
Figure 35, p. 83.

Mr. Piara Singh did not find the designation on the Master Plan persuasive. According to him, the special exception for elderly housing approved at the time the Master Plan was adopted

was much smaller at around 75 units. T. 191. Mr. Arpan Gosch question whether the correct Master Plan should be the *2023 Fairland and Briggs Chaney Master Plan*.

Mr. Palkowitsch agreed with Staff that the Master Plan designated the subject property as suitable for elderly housing. He also testified that the Plan recommends housing for seniors as one of its main goals and states that senior housing may be placed within any residential district with approval. T. 35.

Mr. Palkowitsch also opined that the current Master Plan governing the subject property is the *1997 Fairland Master Plan*. At the public hearing, he displayed a map from the online version of the *2023 Fairland and Briggs Chaney Plan*, showing that the boundary of the newer plan ended on the north side of Md. Rte. 198. An excerpt from this map is shown below:<sup>4</sup>



**Conclusion:** The Hearing Examiner finds that the *1997 Fairland Master Plan* (Master Plan or Plan) guides the development of this property, as the boundary shown in the *2023 Fairland and Briggs*

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<sup>4</sup> At the public hearing, the Hearing Examiner took official notice of the *2023 Fairland and Briggs Chaney Master Plan* without objection. T. 156.

*Chaney Master Plan* clearly ends on the north side of Md. Rte. 198. One of the 1997 Plan's overall objectives is to "[e]ncourage housing for the elderly in appropriate locations." *Plan*, p. 30. The Plan references studies indicating that seniors choose to live near activity centers and specifically identified the subject property as an "appropriate location" for elderly housing in the Figures shown.

The Hearing Examiner disagrees that the number of units proposed in this application versus the older application changes this recommendation. The Plan did not so limit its recommendation when identifying this property as appropriate for elderly housing. Given the need for elderly housing referenced by the Plan, the Hearing Examiner finds that this application conforms to the goals of the Plan to "encourage" opportunities for elderly housing.

## **2. Compatibility with the Neighborhood**

Several sections of the Zoning Ordinance require a proposed conditional use to be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

*d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.*

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

*2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Staff concluded that the proposed development met this standard because (Exhibit 36, p. 13):

The Applicant has proposed the building closer to the industrial and employment properties to give more buffer to the residential detached houses in the R-200 Zone. The Applicant is proposing contemporary residential materials and elements for the façade to fit in more with the residential character of the neighborhood.



*a. Compatibility of Building Design and Transitional Use*

Much of the disagreement at the public hearing stemmed from the views of those in opposition that the building design and size were incompatible with the Valley Stream Estates neighborhood. Ms. Lauren Meyer, a resident of Valley Stream Estates, testified that the use is inconsistent with the character of their existing neighborhood. When she moved into the area in 2020, they were excited to find a quiet neighborhood and excited to be part of a community that was growing. They were looking forward to the relocation of Burtonsville Elementary and the potential for sidewalks along Md. 198 to make it a safer walking environment for all. They were looking forward to having another residential community with children. To have a different development instead, a 50-foot structure that does not resonate with the architectural culture of their neighborhood is very disappointing. T. 184. She knows that the County needs additional housing, but this site could be used for “missing middle” for people with growing families, especially in this part of the County. T. 184.

Ms. Eileen Taylor echoes Ms. Meyer's concerns. The modern design of the building is incompatible with their neighborhood. Currently, trees block their view of the industrial uses west of the site. She feels that the flat roof, large glass windows, and modern facades make their current situation worse because it's more like an industrial building. T. 187.

Mr. Singh testified that he lives right across the street from the site. He believes the scale of this is like a “four-story monster” that does not fit into what the community looks like. There's no benefit to the community to have a transitional use because they don't see the industrial projects now from their homes because of the wooded lot. T. 191.

Ms. Kathy Menasco-Smith, also a resident of Valley Stream Estates, is concerned about the height of the building, which is 50 feet tall. Even if some of the land along the edge of the community is seven feet higher, that's still 43 feet that she be able to see. Even with the 6-foot

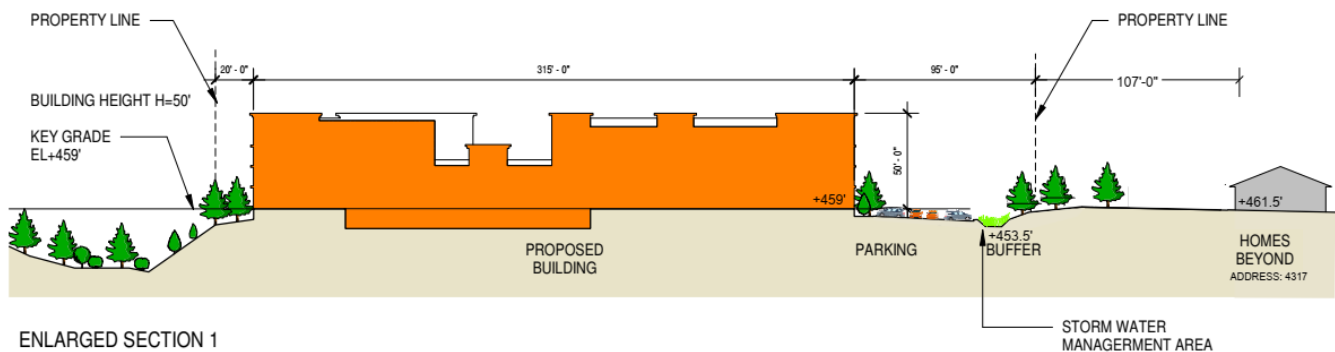
fence and trees likely to be 20 feet tall in 20 years, that's still almost two stories of building that they currently do not have to look at. She believes that the building just does not fit into the community. T. 193.

Mr. Arpan Gosch resides in Valley Stream Estates as well. He testified that he moved to Burtonsville to get away from a busy intersection in Silver Spring where he grew up. His current home is located right off the highway, but it has a rural aesthetic. There are plots of land next to him with horses. T. 196. Valley Stream estates have only a few homes separated by large blocks of land and untouched woods. An historic house is next to him. These are nothing like the new, modern facility that's proposed. While the architecture and lighting are impressive, they don't match the character of the neighborhood. T. 197.

Mr. Palkowitsch, Brookstone's architect, opined the Master Plan thoughtfully used the elderly housing as a transition between the industrial area to the west and the single-family homes to the east. The senior housing is a bigger building that has residential characteristics because it is a home to many people. Rather than being a traditional industrial site with a hard edge to single-family homes, it's used as a transition between larger scale industrial to the lower impact uses. T. 43. He also opined that the building employs a "high transitional design" between the industrial warehouses and the single-family residential homes to the east. T. 56-57.

When procuring the site, they looked at various possibilities for entry points, including Dino Drive and Valley Stream. They concluded that using Dino Drive created the best buffer between the proposed projects and the single-family homes. They've placed the main access aisle nearer the single-family homes to further separate the buildings from the homes. This, and additional landscaping, adds an additional 20 feet of buffering. A cross-section submitted by Brookstone shows that the building is setback approximately 96 feet from the property line

abutting the single-family detached homes. The closest dwelling is approximately 200 feet from the building. The cross-section (Exhibit 48, below) does not include the proposed landscaping.



In Mr. Palkowitsch's opinion, the building design and articulation is designed to break down its mass. The building consists of two wings separated by a 2½ story building, which contains one of the entrances. The two wings are four-stories high. T. 54. For the entrance point, they wanted to create a clear point of orientation to aid senior residents and guests to find the entrance. T. 56.

They also intentionally use varied building articulation, materials, and forms to break up the mass of the buildings. The facades use materials that look like wood and brick and are different colors. They've also used some glass sections because natural light is very important to the senior living experience. T. 56. A "Site Entry Perspective" (Exhibit 27(c), on the next page), shows these variations.

Mr. Palkowitsch testified that the Dino Drive façade tries to strike a balance between "wall science" and residential design. Planning Staff asked that they make this façade more residential and felt that the design shown balanced the two (shown on page 8 of this Report). The windows are residential in nature, and the corner canopy is something that gives a little more residential feel. T. 55.



**Site Entry Perspective  
Exhibit 27(c)**

Conclusion: While the Hearing Examiner understands the testimony of the those along Valley Stream Avenue, she does find that the proposed building is compatible with the surrounding area. The surrounding area, which is described and characterized on pages 6-7 of this Report, is not limited to a single neighborhood. The analysis applies to the broader area. The “surrounding area” delineated for this case is characterized by a mix of uses, including industrial, employment, and commercial uses. These uses abruptly come to a “hard stop” at the subject property, which then transitions immediately to single-family detached homes. In this sense, the use proposed is not as intense as those to the west and does act as a transitional buffer, going from extremely non-residential industrial, commercial, and employment uses in the west to the single-family homes to the east. Were this property developed with single-family homes, as desired by some in opposition, those homes would directly back to the intense commercial and industrial uses to the west without any transition or buffer.

For the same reason, the Hearing Examiner finds that the proposed use is architecturally compatible with the surrounding area. She finds credible the residents’ testimony that abutting homes are not modern (no pictures of the adjoining homes are in the record), however, expert

testimony establishes that the building contains many residential characteristics that set it apart from the industrial uses to the east. Mr. Palkowitsch opined that the more modern design blends residential elements in a transitional manner.

The Hearing Examiner also finds that the landscaping proposed, along with fencing, elevation change, and site layout, will sufficiently mitigate the more modern residential approach. The landscaped "green edge" has significant building setbacks from the single-family homes to mitigate the size of the building. The board-on-board fence proposed along the property line will screen parking (where it is not screened by the elevation change) and a portion of the building immediately. Mr. Nielson testified that trees planted inside the fence will be 14-feet high at installation, will grow to 25 feet within 10 years, and in 20 years would be 30-35 feet. T. 113. The Hearing Examiner is persuaded that, combined with the landscaping proposed, the significant setbacks from residential homes, the building articulation, inclusion of residential elements, and varied height, the building is compatible with the "surrounding area".

*b. Traffic*

Both the Applicant and those in opposition testified on the safety of the intersection of Dino Drive and Md. Route 198. Brookstone's expert in traffic engineering, Mr. Carl Wilson, opined that the intersection of Dino Drive and Md. Rte. 198 does not meet the warrant standards for installation of a traffic signal. His firm looked at police data on reported crashes. Police reported crashes generally means that the vehicle must sustain enough damage so it can't be driven from the scene or there is an injury or fatality. It does not account for fender-benders. T. 140.

In 2021, there were three crashes at Dino Drive and Rt. 198. Two were potential angle-type crashes. One was a rear-end crash, which isn't really of a concern at this location. An angle crash would be where somebody might be leaving the minor street and crash with somebody on the major street in a T-bone-type fashion. In 2022, there were five reported crashes at this location.

Two were listed as rear-ends that were not at the intersection itself but somewhere within a hundred feet or so of the intersection. There were three angle crashes in 2022. In 2023, there was one reported crash not exactly at the intersection that was listed as the same direction rear-end. T. 140-141.

Mr. Wilson explained that angle crashes are typically more severe in nature because two cars T-bone together at an angle. Those crashes have a lot more to do with a driver misjudging oncoming traffic. Rear-end collisions are more typically occurring in a congested area potentially where somebody might not be paying as much attention to the road. Typically, angle crashes are of more concern because of the safety implications associated with them. T. 141-142.

Mr. Wilson opined that that there isn't a safety concern at this intersection. The fact that, even in 2023, there were no angle crashes at all, and the history has been relatively minimal angle crashes throughout the last three years, tells us that there's not a documented safety concern at this intersection. T. 141.

Mr. Wilson also testified the crash data at this location does not warrant a signal. The Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration, has uniform standards for determining when a signal is required. The criteria for a signal based on crash data alone would require five or more crashes to occur in a single 12-month period. This means that angle crashes are more important because signalization does not correct rear-end crashes. T. 142.

Another factor that could warrant a signal is traffic volume. In June, 2022, they studied the volumes at the intersection during a weekday when school was in session. They found that traffic on Dino Drive was insufficient to warrant a signal. Even with trips from the proposed facility added in, the volume is very low because left turns from the minor street were low. One warrant considers eight hours' worth of traffic because SHA wants to make sure that a signal



doesn't unduly delay traffic during non-peak hours. The major street (Md. Rte. 198) satisfies the volumes needed to potentially warrant a signal, but left turns from the minor street (Dino Drive) during the peak hour are well under what would be required for a warrant. T. 144-145. Mr. Wilson acknowledged that they did not include pipeline development in their analysis. He doesn't believe there is anything approved along Dino Drive that would further impact the need for the signal. T. 146.

Ms. Ellen Meyer is concerned about safety along Valley Stream Avenue. She testified that people currently get lost on the way to the post office. They come speeding down Valley Stream Avenue and rip around the cul-de-sac. She is concerned that traffic traveling to the proposed development will also end up on Valley Stream Avenue. T. 185.

Ms. Eileen Taylor is concerned about the impact of the proposed development at the Dino Drive/Md. Rte. 198 intersection. She understands the regulations for having a traffic light installed, but they don't address all the different variables that occur on a day-to-day basis at the intersection. According to Ms. Taylor, the proposed development will add approximately 200 trips a day (not limited to peak hours), and the Applicant has not studied traffic since 2022. Since then, other buildings and facilities have moved to the area, including a DTS Transportation Service right at the corner of the intersection of Dino Drive and 198. There is also a storage facility that uses that intersection. T. 188. The large industrial complex includes a post office, and a couple of churches, one of which is quite large. While traffic studies do not count traffic on Sundays, it is very difficult to get out of their neighborhood on Sunday and this wouldn't even be shown in the counts. A new event venue has also gone in there as well as a large daycare for the disabled.

Ms. Taylor also expressed concerns about the intersection of Dino Drive at Md. Rte. 198. She stated that trucks frequently make a U-turns at the intersection, keeping people in the

neighborhood from making a left from Md. Rte. 198 west onto Dino Drive. Visibility is terrible due to the trucks and vans making U-turns. T. 189.

None of these factors appear to apply to traffic studies done and this causes them concern. The lack of visibility is probably one of the reasons there are so few left turns. Sometimes, there is a queue of trucks and vans waiting to make a U-turn; she is forced to turn right because she can't get around them. When her daughter was learning to drive, she was prohibited from making a left because visibility is so poor. T. 189.

Ms. Taylor asserted that these concerns go unaddressed in a traffic study. That is a major concern for the neighborhood. She feels sorry for the seniors who move in and must use the intersection. She doesn't know how the traffic engineer's report showed only a few left turns when people must turn left to go grocery shopping. T. 189. They've added multiple shops to the development in the northwest quadrant of U.S. 29 and Md. 198, including a Sprouts grocery store and a TJ Maxx. T. 189-190.

Ms. Kathy Menasco-Smith echoed Ms. Taylor's concerns about traffic safety. There are no sidewalks on their street except before a break beneath the curb. She uses the street to walk for exercise. She must be very careful of cars zooming down to cul-de-sac and zooming out. She agrees with the testimony that it's very difficult to get out of Valley Stream Avenue on Sundays because of the two churches. She can also attest to the fact that it's very difficult to cross over from Valley Stream Avenue to the sidewalk on Dino Drive because of the cars zooming down the street. T. 193.

Conclusion: The Hearing Examiner finds that the weight of the evidence in this case supports the Applicant's position that traffic from the proposed development will not create a safety problem either at the intersection of Md. Rte. 198 and Dino Drive or on Valley Stream Avenue. As Mr. Wilson testified, many residents in these facilities do not drive regularly; most of the traffic is

generated by employees and visitors in off-peak hours. With the shifts proposed, only one shift transition takes place during the peak period. The Hearing Examiner makes these shifts times a condition of approval of the conditional use.

While residents complain of delays and danger at the intersection of Dino Drive and Md. Route 198, there is nothing in the record quantifying this except the Applicant's expert testimony regarding the warrant study. While the Hearing Examiner does not doubt the residents' testimony that there are delays, there is nothing concrete establishing the extent of these delays. The Master Plan recommended a study to determine whether a traffic signal at this location would meet warrant requirements. *Master Plan*, p. 82. Brookstone presented expert testimony that current conditions at the intersection do *not* satisfy warrant requirements, either based on traffic volume or crash data.

Residents complain of non-peak period traffic, such as Sundays, but, again, there is nothing in the record quantifying any delay or volume. Unfortunately, concerns about traffic to the proposed residential care facility mistakenly entering Valley Stream Avenue, without more, are somewhat speculative. *Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296 (1975) ("possibility (as opposed to probability)") that conditions will exist is insufficient to justify the denial of a conditional use). The proposed facility does have a sign before the entrance, which will be backlit during the evening hours, and there is no evidence whether similar signage exists for the post office. Based on the evidence in this record, the Hearing Examiner finds that the traffic generated by this use will not significantly alter existing conditions.

*c. Lighting*

Residents of Valley Stream Estates are also concerned about impacts from lighting on the property. Brookstone submitted a photometric plan demonstrating that footcandles at the property line will be below the 0.1 maximum permitted. Exhibit 13. Staff advises that (Exhibit 36, p. 12):

The parking lot and site lighting have photocell shutoff. As required by Section 59-6.4.4.E, the photometric plans indicate that illumination will not exceed 0.1 footcandles at any lot line that abuts a lot with a detached house.

Some residents testified that the building would upset the “dark sky” conditions they currently enjoy. Ms. Meyers remains concerned about light pollution because there is currently nothing on the site. There will be something reaching over tree lines with lights, and that will have an impact regardless of the photometric study. She is concerned about “blue light” pollution from blue LED lights, which can affect bird activity in the area. T. 109. Mr. Gosch questioned whether a “dark sky” study is needed. T. 123.

Mr. Nielson testified that the Lighting Plan originally submitted did not show full cut-off fixtures. Even without these, the illumination levels at property lines abutting single-family detached homes remain at 0.1 footcandles and below. He also opined that the accent lighting designed to illuminate the entrance and other areas would not increase illumination levels at the property line. The parking lot light fixtures proposed are designed to address concerns about impacts to dark skies. The lights will be shielded so light is projected downwards to prevent glare. T. 123. The fixtures are designed to prevent up light glare. T. 125. The lights are not on timers. T. 124. The parking lot lights are on a dusk to dawn setting. The parking lot lights are needed for security. T. 125. At the public hearing, the Applicant agreed to install shields on all four sides of the pole light fixtures. T. 182.

Brookstone is willing to explore using “warm” LED lights to prevent impacts on bird activity. Mr. Palkowitsch testified that lights with 3,000 wattage would be “yellow” that would address Ms. Meyer’s concerns. T. 111.

Conclusion: The weight of evidence supports the finding that the lighting proposed, particularly with cut-off fixtures that will be required as a condition of approval, will not unduly impact the surrounding area. While the structure will be visible, there is no evidence that illumination from

the property will adversely impact the single-family homes. The photometric study demonstrates that illumination levels will be less than 0.1 footcandles for residential abutting properties. Landscaping, fencing, and elevation changes will further mitigate any views of the light poles or of the building.

There is no evidence that the light wattage shown on the Lighting Plan will affect bird activity. However, at the public hearing, Brookstone agreed to explore the use of “warm” LED lights, which Mr. Palkowitsch recommended at 3,000 watts. T. 111. The Hearing Examiner imposes this as a condition of approval.

*e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Staff advises that there are no other conditional uses or special exceptions in the surrounding area. They found that, “[t]he intent of the Conditional Use for the property will not alter the residential nature of the area and will adhere to the recommendations of the Master Plan.” Exhibit 36, p. 13.

Conclusion: The Zoning Ordinance here specifically states that an application that substantially conforms to the recommendations of the Master Plan “does not” alter the nature of the area. The Hearing Examiner agrees with Staff that the addition of a single conditional use, sandwiched between single-family residential and employment/industrial uses, will not alter the character of the neighborhood, particularly as it is specifically recommended by the Master Plan.

### **3. Adequate Public Services and Facilities**

*f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If*

***an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:***

***i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or***

***ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and***

Conclusion: The Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities in this case because a preliminary plan of subdivision will be required after this approval. Exhibit 36, p. 14.

Brookstone did, however, submit testimony and evidence that public facilities will be adequate to serve the use. The primary test for the adequacy of road, transit and pedestrian capacity is outlined in the Planning Board's Local Area Transportation Review (LATR) Guidelines. The Applicant presented expert testimony and evidence that the project will generate fewer than 50 person trips and is therefore exempt from testing under the Guidelines. *Local Area Transportation Review Guidelines* (Fall 2017), p. 8; Exhibit 9.

Mr. Wilson explained the Traffic Statement submitted. Their Statement estimated traffic generated by 88 independent dwelling units, 27 memory care, and 64 assisted living beds. Exhibit 8. They started their analysis using the ITE rates for basic vehicle trip generation. Planning Staff adds separate adjustment factors to those rates to determine the number of "person trips" that will be generated. Based on this, his firm concluded that the site would generate a total of 21 a.m.



vehicular trips and 36 p.m. vehicular trips based on the variable of assisted living beds and congregate care units. Under the LATR Guidelines for this policy area, those numbers are then divided by 0.79. This results in 27 a.m. person trips and 47 p.m. person trips. The LATR Guidelines exempt projects that generate fewer than 50 person trips from doing a full Traffic Study. T. 130.

The ITE rates are based on studies undertaken at similar facilities throughout the country. The studies include driveway counts that capture the total number of people entering and exiting the site during the morning and evening peak periods. They apply that number to the number of beds to square footage, the number of employees to determine rates that we can use to estimate traffic from a proposed facility. T. 131. Brookstone included a table of estimated person trips in its Traffic Statement (Exhibit 9):

Land Use	Size		AM Peak Hour			PM Peak Hour			ADT
			In	Out	Total	In	Out	Total	
Assisted Living	64	Beds	7	5	12	6	9	15	166
Congregate Care Facility	115	Units	5	4	9	10	11	21	245
<b>New ITE Trips for Subject Site</b>			<b>12</b>	<b>9</b>	<b>21</b>	<b>16</b>	<b>20</b>	<b>36</b>	<b>411</b>
<b>Adjusted Vehicle Trips by Policy Area (97%)</b>			<b>11</b>	<b>9</b>	<b>20</b>	<b>16</b>	<b>19</b>	<b>35</b>	
<b>Total Person Trips (Vehicle Trips / 73.9%)</b>			<b>27</b>			<b>47</b>			
<b>Auto Passenger Trips (19.4%)</b>			<b>5</b>			<b>9</b>			
<b>Transit Trips (2.5%)</b>			<b>1</b>			<b>1</b>			
<b>Non-Motorized Trips (4.2%)</b>			<b>1</b>			<b>2</b>			

Mr. Wilson testified that the Traffic Statement uses a conservative means of projecting person trips. T. 134. According to him,, there are other approved methods of doing so. For a residential care facility, estimates may be based on the number of employees. He estimated trip generation using this method. He concluded that the proposed use would yield fewer trips to the

site. This scenario resulted in 17 a.m. peak hour person trips and 27 peak hour person trips. The numbers he relied on for his Traffic Statement in this case are significantly higher than applying rates using a different variable. T. 132-133.

Staff advises that other public facilities are adequate to serve the use. This project will not generate school children because it is restricted to seniors and assisted living/memory care. The property is in water and sewer categories W-1 and S-1 and existing water and sewer is available to the site. Staff also states that other public facilities, including electric, telecommunications, police stations, firehouses, and health services are currently operating within the standards set by the Council's Growth and Infrastructure Policy in effect when the application was submitted. Exhibit 36, p. 15.

Conclusion: The testimony indicating that traffic problems are not captured by the LATR is addressed in the Hearing Examiner's discussion of compatibility. Some in opposition questioned whether the numbers estimated in the Traffic Statement are accurate because they were taken in 2022 and new uses have entered the area.

Nothing in the record contravenes the evidence that methods used in the Traffic Statement are acceptable for the purposes of measuring adequacy of public facilities. Mr. Wilson testified that any new uses would not impact his warrant analysis because the volumes at Dino Drive and Md. Rte. 198 were so low. T. 153. In addition, the number of person trips estimated is conservative based on the methodology used. Based on the Traffic Statement submitted, the Hearing Examiner finds that Brookstone need not submit a Traffic Study in accordance with the LATR Guidelines. The record is uncontroverted that other public utilities are adequate to serve the use and the adequacy of all public facilities will be reviewed finally at preliminary plan.

### **3. No Undue Harm from Non-Inherent Adverse Effects**

*g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*

*i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*

*ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*

*iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to a residential care facility (Exhibit 36, p. 16):

- Vehicle trips;
- On-site lighting;
- Waste management trucks.

Staff goes on to conclude that there are no non-inherent adverse physical or operational characteristics of this use. Staff states (Exhibit 36, p. 16):

The Residential Care Facility (over 16 persons) will not be detrimental to surrounding properties and Staff has not identified any non-inherent adverse

effects. Therefore, the use will not be detrimental to the surrounding properties. The Project includes new landscaping and screening to limit the visual impact of the proposed surface parking lot, and will not cause any objectionable noise, fumes or illumination or decrease the economic value of surrounding properties. Because the proposed light shielding and screening, outdoor lighting will generate 0.0 footcandles at the lot lines except along the front at the public street.

The Proposed Use, provided all requirements and conditions of the use are satisfied, will have no adverse impacts on the health, safety, or welfare of neighboring residents, visitors, or employees. The proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

Conclusion: The Hearing Examiner generally agrees with Staff. She would add to the list of inherent characteristics items consistent with OZAH decisions on residential care facilities in the past, as does the Applicant. Exhibit 7, p. 26. Additional characteristics include parking for residents and employees, varied hours of operation, noise or odors associated with vehicles, noise or odors associated with trash collection and trucks, and an emergency electrical generator. Exhibit 7, p. 26; *see, Hearing Examiner's Report and Decision, CU 22-01, Application of Heritage Land LLC, p. 84* (issued September 6, 2022).

There is no evidence in this record that a non-inherent physical or operational characteristic exists. In addition to Staff's opinion, experts testified that there are no non-inherent characteristics relating to lighting, traffic, or public facilities. T. 106, 147, 181. The Hearing Examiner finds that there are no non-inherent characteristics of this use that would warrant denial of the application.

***Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

## **B. Development Standards of the Zone (Article 59.4)**

To approve a conditional use, the Hearing Examiner must find that the application meets the

development standards of the R-200 Zone, contained in Article 59.4 of the Zoning Ordinance. The specific standards for residential care facilities require that setbacks meet the standards of the R-30 Zone. Staff included a table (Exhibit 36, p.11, below) in its report comparing the minimum development standards of the R-200 Zone and applicable R-30 Zone standards to what is proposed in this application:

ii. **Development Standards**

*Table 1: Development and Parking Standards (R-200)*

<b>Development Standard Section 59.4.4.7.B</b>	<b>Permitted/ Required (R-200)</b>	<b>Permitted/ Required (R-30)- Section 59.4.4.14.B</b>	<b>Proposed*</b>
Minimum Lot Area	20,000 sq. ft.	n/a	255, 571 sq. ft.
Minimum Lot Width at Front Building Line	100 ft.	n/a	180 ft.
Minimum Lot Width at Front Lot Line	25 ft.	n/a	180 ft.
Maximum Density	2.18 units/acre (15 units/acre per the use standards)	n/a	15 units/acre
Maximum Lot Coverage	25%	n/a	8.70%
Green Area	n/a	50%	55.3%
Minimum Front Setback	40 ft.	30 ft.	40 ft.
Minimum Side Setback	12 ft.	18 ft. & 10 ft.	95 ft. & 20 ft.
Minimum Sum of Side Setbacks	25 ft.	n/a	n/a
Minimum Rear Setback	30 ft.	45 ft.	184 ft.
Maximum Height	50 ft.	n/a	50 ft.
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	1 space/dwelling unit= 88 spaces 0.25 space/bed= 23 spaces 0.50 space/employee= 22 spaces Total= 133 space		133 spaces

Conclusion: Nothing in the record contravenes Staff’s conclusion that the development meets the required standards, as evidenced by the above table. The Hearing Examiner finds that these standards have been met.

**C. Use Standards for a Residential Care Facility  
(Section 59.3.3.2.C.2.b.)**

The specific use standards for approval of a Residential Care Facility are set out in Section 59.3.3.2.E. of the Zoning Ordinance.

## 1. Defined, In General

**Residential Care Facility means a group care or similar arrangement for the care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living, or for the protection of the individual, in which:**

- a. the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements;**
- b. resident staff necessary for operation of the facility are allowed to live on-site; and**
- c. the number of residents includes members of the staff who reside at the facility, but does not include infants younger than 2 months old.**

Conclusion: The assisted living and memory components meet the requirements of the above definition and the remaining requirements will be imposed by condition. Independent living units are permitted if they are part of a “senior care community” defined in the Zoning Ordinance. *Zoning Ordinance*, §59-3.3.2.E.2.c.ii(h). Brookstone confirms that it will operate a senior care community and comply with the age restrictions required by the Zoning Ordinance. Exhibit 58.

## 2. Use Standards

*Section 3.3.2.E.2.c.ii. Where a Residential Care Facility (Over 16 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:<sup>5</sup>*

*(a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.*

Conclusion: The facility will have a variety of amenities, already described in Part II.C of this Report. This standard is met.

**(b) A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.**

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<sup>5</sup> The Hearing Examiner does not include the standard in Section 59.3.3.2.E.2.c.2(b) because it relates to residential care facilities for children.



Conclusion: The Applicant states that no children will be residing at the facility. Exhibit 7, p. 28.

This standard is not applicable to the application.

**(c) Where residential dwelling units are provided**

- (1) the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and**
- (2) the minimum green area is 50%.**

Staff reports that the property consists of 5.8671 acres, "which would allow up to 88 dwelling units". Exhibit 36, p. 8. It also concludes that 127,786 square feet of green area is required and Brookstone proposes 141,250 square feet, equal to 55.3% green area. *Id.*

Conclusion: The Hearing Examiner agrees with Staff's calculation, and the numbers are confirmed on the sealed conditional use plan. Exhibit 12(a).

***(d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:***

\* \* \*

***(2) In all other zones, the minimum lot area is 2 acres or the following, whichever is greater:***

\* \* \*

***(A) in RE-2, RE-2C, RE-1, and R-200 zone: 1,200 square feet per bed;***

Staff states that, under this section, as many as 213 beds would be permitted. Exhibit 36, p. 9.

Conclusion: As Brookstone proposes a total of 91 beds, this standard has been met.

**(e) Principal building setbacks for all building types must meet the minimum setbacks required under the standard method of development for the subject building type in the R-30 zone (see Section 4.4.14.B.3, Placement).**

The proposed building meets or exceeds all the setback requirements of the R-30 Zone for an apartment building type. This is shown on a table from the Staff Report confirming compliance with all development standards (shown on page 37 of this Report).

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that the proposed development meets these requirements.

**(f) The minimum side setback is 20 feet to abutting lots not included in the application.**

Conclusion: Staff confirms that the proposed building will be 20 feet from the western property line and 95 feet from the eastern property line, meeting this standard. Exhibit 36, p. 9. The Hearing Examiner finds that this standard will be met.

**(g) Independent dwelling units must satisfy the MPDU provisions of Chapter 25 (Section 25.A-5).**

The Applicant did not have a specific proposal for MPDUs associated with this use. Brookstone's Counsel stated that there is a proposal pending to lower MPDU requirements for independent units and impose a very low requirement for assisted living and memory care. T. 201.

Conclusion: The Hearing Examiner imposes a condition on approval of this special exception requiring Brookstone to provide the number of MPDUs required at the time of preliminary plan approval. With this condition, this requirement is met.

**(h) In a Continuing Care Retirement Community and a Senior Care Community, occupancy of any independent dwelling unit is restricted to persons 62 years of age or older, with the following exceptions:**

- (1) the spouse of a resident, regardless of age;**
  - (2) another relative of a resident, 50 years of age and older;**
  - (3) the resident widow, widower, or other surviving relative of a resident who dies while residing at the Continuing Care Retirement Community or the Senior Care Community is allowed to remain, even though the resident widow, widower, or other surviving relative has not reached the age of 62.**
- A minimum of 80% of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.**

Conclusion: The Applicant confirms that it will operate a Senior Care Community and occupancy will meet the standards above. Exhibit 58.

**D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below.

**1. Parking and Loading**

Parking and loading standards are governed by Division 6.2 of the Zoning Ordinance.<sup>6</sup> Staff concluded that parking and loading will be adequate to support the use. The access point is from Valley Stream Avenue and continues down the drive aisle to the rear of the building, where the loading dock and trash disposal are located. Exhibit 36, p. 12. The Staff Report includes a table that compares the number of vehicle and bicycle parking spaces required to the number provided (Exhibit 36, p. 12):

<b>Parking Standards</b>	<b>Required/Allowed</b>	<b>Proposed</b>
<b>Vehicle Parking Spaces</b>		
<u>Age-Restricted Housing</u> <u>Minimum Required Spaces</u>	1 space per unit 0.25 spaces per bed 0.5 spaces per employee 133 spaces	133 spaces
<b>Parking Breakdown (spaces)</b>		
Standard Spaces	126	126
Accessible Spaces	5	5
Electric Vehicle	2	2
<b>Bicycle Parking</b>	22 Long Term, 1 short term	22 Long Term, 1 short term

Conclusion: There is nothing in the record to controvert Staff’s conclusion that the parking and

<sup>6</sup> Queuing requirements apply only to uses with drive-thrus, and therefore do not apply to this use. *Zoning Ordinance*, §59.6.2.7.A.

loading provided meets the requirements of Article 6 of the Zoning Ordinance. Having no evidence to the contrary, the Hearing Examiner finds that these standards are met.

## **2. Site Landscaping and Screening**

Conclusion: Screening standards in Section 6.29 of the Zoning Ordinance governs screening along the lot line abutting the single-family residential homes.<sup>7</sup> Brookstone presented expert testimony that the landscaping along this edge meets these standards, and in fact, exceeds the minimum required width of 10 feet. T. 97-98.

Having no evidence to the contrary, the Hearing Examiner finds that the revised Landscape Plan (Exhibits 53(a) – (c)) meet the technical requirements of Section 6.29 of the Zoning Ordinance. The Hearing Examiner has already concluded that the landscaping shown is compatible with the surrounding uses; compliance with the technical requirements is necessary to the extent needed to ensure compatibility. *Zoning Ordinance*, §59-7.3.1.E.1.b.

## **3. Outdoor Lighting**

Conclusion: The outdoor lighting proposed for the conditional use was discussed in Part II.C.2. of this Report and Decision and again in the Hearing Examiner's assessment of the compatibility of the use with the surrounding area. As indicated there, permissible lighting levels for a conditional use are specified in Zoning Ordinance §59.6.4.4.E., which states:

*Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.*

The Lighting Plan submitted (Exhibit 13) demonstrates that illumination at the property does not exceed the maximum of 0.1 footcandles, and in many places, is lower than that.

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<sup>7</sup> Staff applied the standard under Section 59-6.53 of the Zoning Ordinance for perimeter screening as did the Hearing Examiner initially. Exhibit 36, p. 13; T. 99. At the public hearing, the Applicant correctly pointed out that Section 6.29 (parking lot perimeter screening) governs screening along the property abutting the single-family residential homes. *Zoning Ordinance*, §59-6.5.3.A.4.

Conclusion: Based on the undisputed evidence described above, the Hearing Examiner finds that the outdoor lighting proposed conforms to the requirements of the Zoning Ordinance.

#### **4. Signage**

Brookstone proposes a sign at the entrance from Valley Stream Avenue at the location shown on the conditional use plan. The Hearing Examiner finds that the location is appropriate to differentiate the entrance from the remainder of Valley Stream Avenue and better avoid the possibility of visitors continuing onto Valley Stream Avenue. The exact size and design of the sign must be approved by the Department of Permitting Services, or if it exceeds the size permitted by right in the R-200 Zone, obtain a variance from the Sign Review Board under Section 59-7.4.1. of the Zoning Ordinance. The Hearing Examiner imposes a condition to this effect.

#### **IV. Conclusion and Decision**

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Elderhome Land LLC aka Brookstone Senior Living for a conditional use under Section 59.3.3.2.E.2.c of the Zoning Ordinance to operate Residential Care Facility on property identified as Block B, Outlot A, Valley Stream Estates (Tax Account No. 05-03552453), in the southwest corner of the intersection of Dino Drive and Valley Stream Avenue is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the subject property are limited to those shown on the Conditional Use Site Plan (Exhibit 12(a)-(d)), Lighting Plan (Exhibit 13) and Landscaping Plan (Exhibit 53(a) – (c)). The Applicant must file copies with OZAH of any plans modified after subdivision of the property.
2. The use is limited to a Residential Care Facility (over 16 persons).

3. Occupancy of the residential care facility is limited to 88 dwelling units and 91 assisted living/memory care units.
4. No more than 44 employees may be on-site at any one time. The timing of employee shifts is limited to those on Table 1 of the Applicant's Description of Operational Features (Exhibit 8, p. 1, and shown on page 15 of this decision).
5. Occupancy of the dwelling units shall be in accordance with a statutory exemption from the provisions of the Fair Housing Act and Section 59-3.3.2.E.2.c.ii(h) of the Zoning Ordinance; the Applicant must regularly monitor compliance with age requirements.
6. All parking lot pole lights shall have full cut-off fixtures shielded on four sides. The Applicant will use "warm" light wattage of approximately 3,000 watts for all fixtures.
7. The entrance sign located on the conditional use plan must be approved by either the Department of Permitting Services, or if required, by the Sign Review Board. Copies of the sign permit or the Sign Review Board's approval of a variance must be filed with OZAH.
8. The Applicant shall comply with all Moderately Priced Dwelling Unit requirements (Chapter 25A of the Montgomery County Code) applicable at the time of preliminary plan approval.
9. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.
10. Prior to issuance of any building permit for the subject conditional use, the Applicant or any successor in interest must obtain approval of a Preliminary Plan of Subdivision and Record Plat under Chapter 50 of the Montgomery County Code. The Applicant and any successors in interest must report to OZAH any proposed changes to the conditional use plans as a result of subdivision proceedings and must file a copy of the proposed amended plans with OZAH.
11. At the time of Preliminary Plan, the Applicant must enter into a surety and maintenance agreement that includes any landscape and lighting approved by the Hearing Examiner.
12. Prior to any land disturbing activities, the Applicant must receive approval of a Final Forest Conservation Plan by the Montgomery County Planning Board.
13. The facility must be operated in accordance with all applicable County noise regulations.
14. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped

accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 28th day of March, 2024.



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Lynn Robeson Hannan  
Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals within 10 days after issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board's Worksession can be found on the Board's website and in the Board's office. You can also call or email the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the Worksession.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600, emailing [BOA@montgomerycountymd.gov](mailto:BOA@montgomerycountymd.gov), or visiting the Board's website: <http://www.montgomerycountymd.gov/boa/>.

Additional procedures are specified in Zoning Ordinance §59-7.3.1.f.1. Contact information for the Board is:

Montgomery County Board of Appeals

100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.Montgomerycountymd.gov/boa/>

NOTIFICATION OF DECISION TO BE SENT TO:

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